

REMARKS

This application has been reviewed in light of the Office Action mailed on April 4, 2008.

Claims 1, 2 and 5-9 are pending in the application with claim 1 being in independent form.

Claims 1, 8, and 9 were rejected under 35 USC § 103 (a) as being unpatentable over U.S. Patent No. 5,954,259 to Viola et al. (hereinafter “Viola”) in view of U.S. Patent No 3,859,996 to Mizzy et al. (hereinafter “Mizzy”).

Claim 1 recites, *inter alia*, a surgical stapler including a clamping handle selectively movable to actuate the clamping of tissue and a pressure sensitive trigger which regulates the speed at which surgical fasteners are deformed. Viola, taken in any combination with Mizzy, fails to disclose or suggest the surgical stapler of claim 1, having both a clamping handle and a pressure sensitive trigger.

Viola discloses a surgical apparatus for applying surgical fasteners to body tissue. The surgical apparatus “is configured to clamp body tissue, apply a plurality of surgical fasteners to the body tissue, and form an incision in the fastened body tissue during a laparoscopic surgical procedure.” (Column 4, lines 10-14). Nowhere does Viola disclose a pressure sensitive trigger and a clamping handle. Instead, Viola discloses a trigger which actuates clamping and firing of staples “concomitantly.” Viola teaches away from the present application in that instead of a clamping handle and a pressurized trigger which are independent of each other, the clamping and triggering functions disclosed in Viola are concomitant with each other.

Mizzy discloses an “injector apparatus of the pressure jet type including a pressure sensitive actuating mechanism....” (Column 2, lines 1-8). The apparatus disclosed in Mizzy is

not a surgical stapler device and thus does not contain a clamping handle. The trigger disclosed in Viola actuates both the clamping and the firing of staples simultaneously. Therefore, Viola taken in any proper combination with Mizzy discloses a pressure sensitive trigger which controls both the clamping of tissue and the firing of staples. Applicant, on the other hand, discloses a clamping handle and a pressurized trigger which is independent from the clamping handle. Furthermore, Mizzy discloses a trigger mechanism that activates an injector only after a predetermined pressure is reached, to prevent accidental firing. The trigger is not used to vary the pressure of the medicament dispensed.

According to the surgical stapler of claim 1, the moveable clamping handle “actuate[s] opposing tissue contacting surfaces 110 and 120...to manipulate, grasp fasten and cut tissue.” The moveable clamping handle is used to “initially close[] opposing tissue contacting surfaces 110 and 120....” This feature allows a surgeon to ensure that the tissue being stapled is properly positioned prior to the actuation causing the deformation of the staples. If the surgeon were to realize that the tissue contacting surfaces were not properly positioned, the moveable clamping handle could be released and the tissue contacting surfaces could be repositioned. Further, the clamping handle allows the surgeon to hold tissue in place prior to the actuation causing the deformation of the staples.

Once the surgeon is satisfied with the placement of the tissue contacting surfaces, the moveable pressure trigger can be squeezed, “activat[ing] the supply of pressurized gas to fire [the] stapler....” The surgeon can then regulate the firing force of the stapler through the tissue. “The further, faster or harder th[e] trigger is squeezed, the faster [the] pneumatic drive assembly turns, thus making [the stapler] fire more quickly and/or making the stapler fire with more

power." Thus, the present application discloses a "unique combination of a manual clamp-up and a motorized firing and retraction stroke...." These two distinct mechanisms, namely the clamping handle and the trigger, provide the above mentioned features due to their independence from one another. A surgical stapler with a combined clamping handle and trigger, even if it were pressure sensitive, would prevent a surgeon from ensuring that the tissue being stapled is properly positioned prior to being stapled and, likewise, would prevent the surgeon from holding the tissue being stapled in place.

Accordingly, in view of the foregoing amendments and remarks, withdrawal of the rejection of claim 1 under 35 USC § 103 (a) as being unpatentable over Viola in view of Mizzy is respectfully requested.

Since claims 8 and 9 depend from claim 1 and therefore contain all the limitations of claim 1, it is respectfully requested, in view of the foregoing amendments and remarks, that the rejection of each of claims 8 and 9 under 35 USC § 103 (a) as being unpatentable over Viola in view of Mizzy be withdrawn.

Claims 2 and 5-7 were rejected under 35 USC § 103 (a) as being unpatentable over Viola in view of Mizzy and in further view of U.S. Patent Application No. 2002/0096550 to Green et al (hereinafter "Green").

Since claims 2 and 5-7 depend from claim 1 and therefore contain all the limitations of claim 1, it is respectfully requested, in view of the foregoing amendments and remarks, that the rejection of each of claims 2 and 5-7 under 35 USC § 103 (a) as being unpatentable over Viola in view of Mizzy and further in view of Green is withdrawn. Further, Green is devoid of any

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disclosure, teaching, or suggestion of a clamping handle and a pressure sensitive trigger which is independent of the clamping handle.

In view of the foregoing amendments and remarks, it is respectfully submitted that all claims presently pending in the application, namely Claims 1, 2, and 5-9, are believed to be in condition for allowance.

If the Examiner should have any questions concerning this communication or feels that an interview would be helpful, the Examiner is requested to call the Applicant's undersigned attorney at the Examiner's convenience.

Respectfully submitted,



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